



OFFICE OF THE  
DEPUTY UNDER  
SECRETARY OF  
DEFENSE  
(ENVIRONMENTAL  
SECURITY)

# CERCLA/RCRA Overlap in Environmental Cleanup

## *Background*

**CERCLA**  
Comprehensive  
Environmental  
Response,  
Compensation,  
and Liability Act

**RCRA**  
Resource  
Conservation and  
Recovery Act

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA) are the primary Federal environmental laws governing the investigation and cleanup of contaminated sites. These laws share the goal of protecting human health and the environment. Cleanup of contaminated sites may be governed by either CERCLA or RCRA depending on such factors as the source and cause of the contamination, the status of the installation as either a National Priorities List (NPL) or a non-NPL site, and whether the installation has sought or is seeking a RCRA permit for managing hazardous wastes. Conflicts are not uncommon as the different regulatory agencies exercise their respective authorities under these statutes.

Although CERCLA and RCRA are separate legislative authorities, each remedial cleanup program should operate consistently with the other and should yield similar environmental solutions when faced with similar circumstances. Any procedural differences between CERCLA and RCRA should not substantively affect the outcome of remediation.

In establishing the Defense Environmental Restoration Program (10 USC 2701-2708 and 2810), Congress directed that Department of Defense (DoD) environmental cleanup efforts be consistent with CERCLA. Additionally, CERCLA itself requires that cleanup efforts at Federal facilities be conducted under CERCLA. Due to these reasons, and in order to have a common framework for managing a national cleanup program, DoD uses CERCLA as the primary legislative authority for managing cleanup of DoD sites. As the lead agency for cleanup under CERCLA, DoD can also take advantage of existing CERCLA authorities (such as removal actions) to expedite cleanup.

At Base Realignment and Closure (BRAC) installations, the BRAC cleanup team, under the leadership of the BRAC environmental coordinator, should develop consensus to make effective use of existing cleanup authorities to expedite cleanup using CERCLA or RCRA.

This fact sheet presents an overview of these two environmental laws, highlights their differences and similarities, and provides some guidance on the scenarios in which each would be used. CERCLA/RCRA integration is a complex topic. The resources listed at the end of this fact sheet provide more information on this topic. A separate fact sheet is being developed on means by which these two processes can be integrated in the cleanup of DoD sites.

## *Overview of CERCLA and RCRA*

CERCLA, which was enacted in 1980, provides a process for identifying, investigating, and remediating releases of hazardous substances into the environment from contaminated sites. In general, CERCLA addresses uncontrolled releases of hazardous substances from



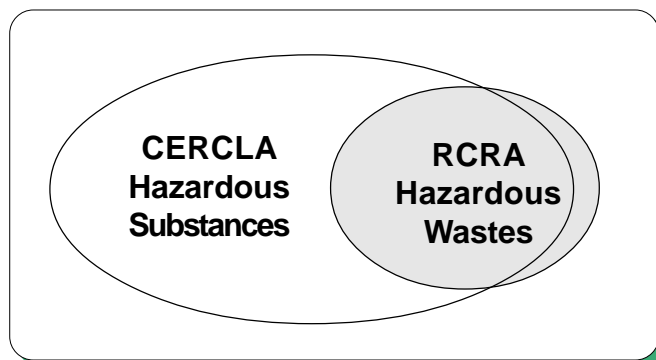
abandoned facilities, facilities that are no longer in operation, and currently operating facilities that experience releases of hazardous substances that pose a risk to human health and the environment.

Enacted in 1976 as an amendment to the Solid Waste Disposal Act, RCRA provides a comprehensive legislative framework for a cradle-to-grave hazardous waste management program. RCRA establishes requirements for hazardous waste generators and transporters, as well as for hazardous waste treatment, storage, and disposal facilities. RCRA's focus is on regulating *currently* operating facilities and protecting human health and the environment through good management practices when generating, transporting, treating, storing, or disposing of hazardous wastes.

### ***Integration Fundamentals***

The interface between CERCLA and RCRA begins with the overlap between the definition of a CERCLA hazardous substance (CERCLA §101(14)) and the definition of a RCRA hazardous waste (RCRA §3001). A CERCLA hazardous substance includes constituents defined under other environmental laws, such as RCRA, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act, but excludes petroleum (commonly referred to as the “petroleum exclusion”). A RCRA hazardous waste must either meet the description of a specifically listed waste or exhibit one of four hazardous waste characteristics (i.e., ignitability, corrosivity, reactivity, or toxicity).

CERCLA hazardous substances include most RCRA hazardous wastes, although a contaminant can be a RCRA waste without being a CERCLA substance (e.g., petroleum) and vice versa (Figure 1). Understanding the relationship between these definitions is fundamental to an understanding of the scope of cleanup authorities provided by CERCLA and RCRA.



**Figure 1.**

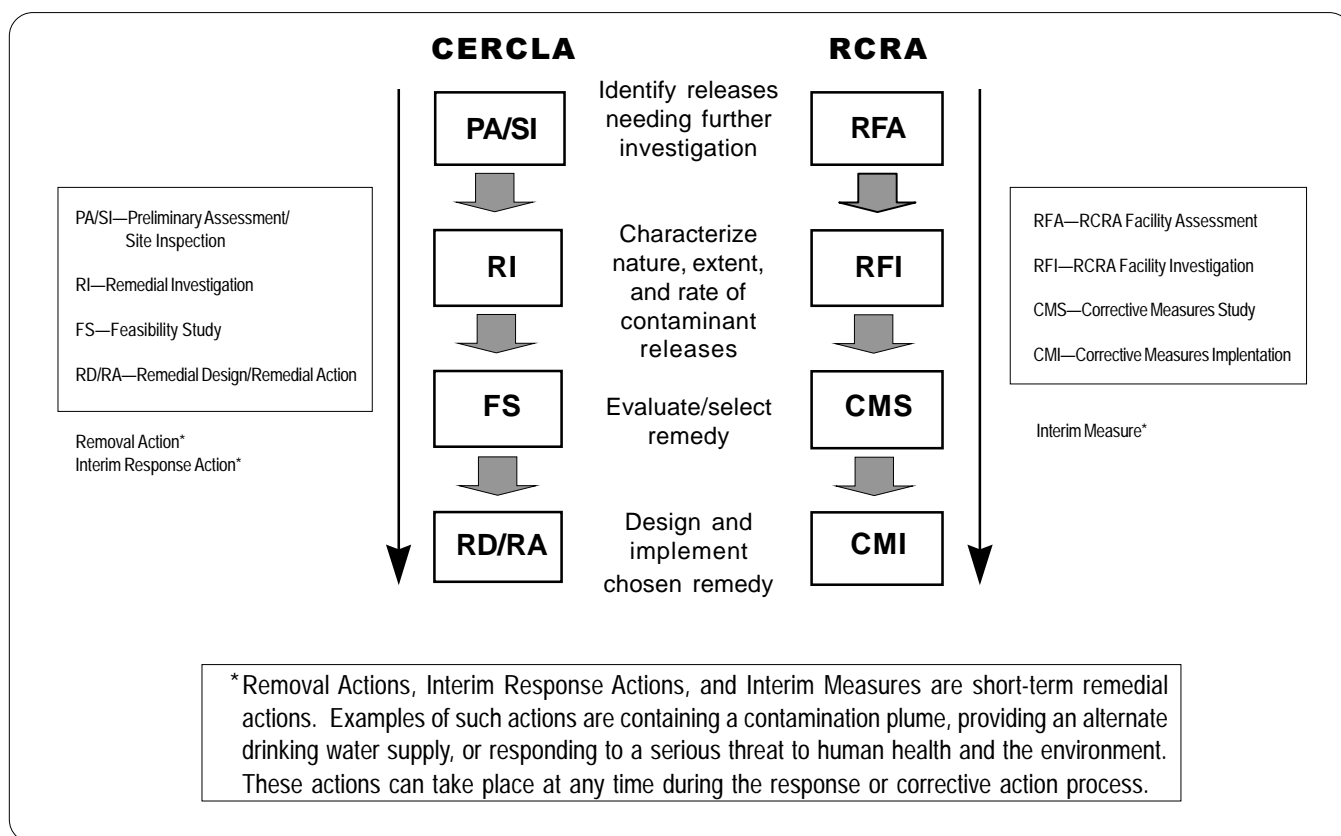
Relationship between CERCLA  
Hazardous Substances and  
RCRA Hazardous Wastes

### ***Comparison of CERCLA and RCRA Cleanup Authorities***

CERCLA was intended to address past mismanagement of hazardous substances by identifying and cleaning up contaminated sites. Because CERCLA was designed to address historical contamination, the requirements for using the CERCLA response process are broader than those for RCRA. Generally, CERCLA is used to address the following situations:

- Release of a CERCLA hazardous substance, in accordance with CERCLA §103(a) or §103(c) or §104
- Filing of a citizen petition
- Discovery of hazardous substance releases during an unrelated inspection by another agency or by any other method of detecting uncontrolled releases of hazardous substances.

RCRA, when first enacted, provided authority for implementing hazardous waste management regulations but provided only limited authority for requiring cleanup. In 1984, the Hazardous and Solid Waste Amendments expanded RCRA by adding corrective action authority to compel cleanup of past contamination at RCRA facilities.



**Figure 2.**

CERCLA Response Process versus RCRA Corrective Action Process

RCRA corrective action allows the Environmental Protection Agency (EPA) and authorized states to require the cleanup of contamination at RCRA facilities that is potentially threatening to human health and the environment. For purposes of corrective action, the RCRA facility may include the entire installation and not merely the RCRA-permitted units. Generally, corrective action is invoked in the following circumstances:

- A RCRA treatment, storage, or disposal facility seeks an operating permit or a post-closure permit
- An implementing agency (e.g., EPA or the authorized state) issues a cleanup enforcement order
- A site manager at a facility decides to voluntarily implement corrective action.

The RCRA corrective action process mirrors the CERCLA response process (Figure 2). The major goals of both processes are the same: (1) protect human health and the environment; (2) include the public in the remedial decision-making process; and (3) attain effective cleanup standards.

Because of these similarities, the cleanup that results from using either CERCLA or RCRA at a site should be the same. However, there are statutory advantages that a CERCLA response has for expediting cleanups. For example, under CERCLA there is no need for permits for on-site actions (§121(e)), and there is the ability to order off-site access (§104(e)(5)). In addition, RCRA regulations may be used as applicable, relevant, and appropriate requirements (ARARs) under CERCLA. Therefore, site managers considering use of RCRA authority must carefully evaluate the two cleanup authorities to determine whether giving up these advantages of CERCLA will benefit their cleanup program in the long run. EPA has published guidance entitled *Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities* (November 24, 1996) to assist site managers in choosing between CERCLA and RCRA.

***Cleanups Limited to Using CERCLA***

As discussed earlier, the definition of CERCLA hazardous substances is broader than the RCRA definition, and includes RCRA hazardous wastes (with some exceptions). In addition, some contaminants that may be discovered at an installation may meet the CERCLA definition of a hazardous substance but not meet the definition of hazardous waste under RCRA. In these instances, CERCLA authority could be used to clean up the site because RCRA authority does not apply.

***Cleanups Limited to Using RCRA***

One limitation on the use of CERCLA is the "petroleum exclusion." As mentioned previously, petroleum is excluded from the definition of hazardous substances, and, therefore, if there is a release of petroleum into soil, CERCLA cannot be used as the legal authority for a cleanup action. If the released petroleum came from an underground storage tank (UST), then the UST regulations promulgated pursuant to RCRA Subtitle I may apply. If the petroleum release did not come from a UST, then the contaminated soil may meet the definition of a RCRA hazardous waste and RCRA corrective action authority may apply.

***Cleanup Oversight***

One of the most important differences between the CERCLA response process and the RCRA corrective action process is the determination of who is the lead (CERCLA) or implementing (RCRA) agency. This is the agency with the authority to make final decisions. At CERCLA sites, the lead agency is DoD, although at NPL sites, EPA involvement is required. At RCRA corrective action sites, the EPA Region or an authorized state will be the implementing agency.

***Where to Learn More***

- Corrective Action for Releases From Solid Waste Management Units at Hazardous Waste Management Facilities Proposed Rule, 61 FR 19432, May 1, 1996.
- U.S. Army Environmental Center Web Page: <http://aec-www.apgea.army.mil:8080/>
- EPA's Superfund Web Page: <http://www.epa.gov/superfund/index.htm>
- EPA's Office of Solid Waste and Emergency Response Web Page: <http://www.epa.gov/epaoswer/osw/index.htm>
- Department of Energy RCRA/CERCLA Comparison Web Page: <http://www.em.doe.gov/rcracerc/compar.html>

This and other documents on the BRAC Environmental Program are available at: <http://www.dtic.mil/envirodod/brac/>

We welcome and invite your comments on this fact sheet, as we seek ways to improve the information provided.  
Please send comments to the following address:

**OADUSD (Environmental Cleanup)**

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